

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through VI; the amendment of	)	PROPOSED ADOPTION,
ARM 12.6.1601, 12.6.1602, and	)	AMENDMENT, AND TRANSFER
12.6.1603; and the transfer of	)	
12.6.1606 pertaining to game bird	)	
farms, possession of captive-reared	)	
game birds, and field trial permits	)	

TO: All Concerned Persons

1. On June 28, 2007, at 7:00 p.m. the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana to consider the proposed adoption, amendment, and transfer of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., June 14, 2007, to advise us of the nature of the accommodation that you need. Please contact Tim Feldner, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4039; fax (406) 444-4952; or e-mail tfeldner@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

(1) "Captive-reared birds" means live, upland game birds reared in captivity and purchased from a game bird farm.

(2) "Department" means the Department of Fish, Wildlife and Parks.

(3) "Dog training" means the informal handling, exercising, teaching, instructing, and disciplining of dogs in the skills and techniques of hunting and retrieving game birds characterized by absence of fees, judging, or awards.

(4) "Permit" means a permit to use or possess live, captive-reared upland game birds.

AUTH: 87-4-913, MCA  
IMP: 87-4-915, MCA

NEW RULE II PERMIT TO USE CAPTIVE-REARED BIRDS (1) A person using captive-reared birds in the training of dogs or raptors must have a permit issued by the department.

(2) Persons desiring a permit shall submit a completed permit application on forms provided by the department. Applicants shall submit the application to the regional office in the area where the training is expected to take place.

(3) The department may allow a person training dogs to use a maximum of 50 captive-reared birds per year. The department may allow an applicant more than 50 captive-reared birds if the applicant provides written justification.

(4) A permit to use captive-reared birds for dog training is valid from January 1 through December 31 of each year.

(5) The department may allow a person training raptors to use a maximum of 20 captive-reared birds during the permitted period.

(6) A permit to use captive-reared birds for raptor training is valid from August 1 through March 31 and must be renewed annually.

(7) Permits to use captive-reared birds are nontransferable. The department shall revoke a permit if the permittee does not comply with the rules in this subchapter. When revocation occurs, the department shall deny any application for a subsequent permit for one year after the date of revocation. The department has sole discretion on whether or not to issue or revoke a permit. The department's decision is final.

AUTH: 87-4-902, 87-4-913, 87-4-915, MCA

IMP: 87-4-915, MCA

Reason: Under 87-4-902(1), MCA, a person using game birds for purposes other than sale or conveyance must have written authorization from the department. Previously, department policy established the criteria for obtaining the department's written authorization. New Rules I and II will clarify the previous policy in administrative rule.

NEW RULE III USE OF CAPTIVE-REARED BIRDS IN TRAINING (1) When captive-reared birds are used in dog training:

(a) all captive-reared birds used must have a streamer of fluorescent surveyor tape conspicuously attached to the leg prior to release at the training site;

(b) captive-reared birds may only be killed by the permittee or persons accompanying the permittee and assisting in training; and

(c) captive-reared birds may only be killed on land that the permittee owns, leases, or has permission to use for dog training.

(2) Captive-reared birds killed during raptor or dog training must remain in the possession of the permittee unless the permittee transfers the birds to a person who also possesses a valid permit. The permittee may assign ownership of killed birds to a nonpermit holder by written documentation that is signed by the permittee.

(3) When captive-reared birds are used in raptor training, birds may only be released on land that the permittee owns, leases, or has permission to use for raptor training.

AUTH: 87-4-913, MCA

IMP: 87-4-902, 87-4-915, MCA

Reason: Training dogs with a method that will kill birds acquired from a game bird farm requires a written permit from the department according to 87-4-915(6)(b), MCA. The department currently issues a permit to kill captive-reared birds in dog training. New Rule III is necessary to delineate the specific requirements that the department will apply to a permit to use captive-reared birds in dog training as well as in raptor training.

The department is requiring a streamer on captive-reared birds used in dog training so that the trainers can distinguish birds used in training from native birds they would need a license to hunt. The department is establishing requirements that landowner permission be obtained for use of captive-reared birds to protect landowner rights. Additionally, New Rule III provides the details of who may kill a captive-reared game bird and how killed birds may be transferred to another person so that reasonable training can take place and to prevent waste of birds.

NEW RULE IV PERMIT TO RELEASE RING-NECKED PHEASANTS FOR NONCOMMERCIAL PURPOSES (1) A person wishing to release ring-necked pheasants for noncommercial purposes shall file a completed application on a form provided by the department at the regional office in the region where birds will be released.

(2) To obtain a permit, a person shall own the land where the release of birds is contemplated or shall have the written permission of the landowner. A nonlandowner must provide written proof of landowner permission to the department before the department may issue the permit.

(3) A permittee may release a maximum of 200 ring-necked pheasants on an annual basis on one contiguous parcel of property.

(4) A permittee may release ring-necked pheasants only between March 1 and August 31.

(5) Once released, captive-reared pheasants are considered wild birds and fall under all upland game bird hunting regulations.

AUTH: 87-4-913, MCA

IMP: 87-4-501, 87-4-902, 87-4-915, MCA

Reason: The introduction or transplantation of ring-necked pheasants by the department is allowed under 87-5-714, MCA, upon approval by the commission. This approval has been granted with certain conditions under a permit previously issued by policy. The policy conditions were developed to protect landowner rights and native birds. This new rule provides clarification of the criteria permittees must meet to release ring-necked pheasants in Montana. New Rule IV replaces policy by administrative rule.

NEW RULE V PERMIT TO POSSESS CAPTIVE-REARED BIRDS FOR NONCOMMERCIAL PURPOSES (1) A person wishing to possess captive-reared birds for noncommercial purposes not associated with training, release, or field trials shall file a completed application on a form provided by the department at the regional office in the region where the person will keep the birds.

(2) Permits to possess captive-reared birds for noncommercial purposes expire on December 31 of the year issued.

(3) A permittee shall confine captive-reared birds in fencing designed to prevent the entry of wild game birds and to prevent the escape of captive-reared birds into the wild.

(4) A permittee may not release captive-reared birds into the wild without authorization from the department.

AUTH: 87-4-913, MCA

IMP: 87-4-902, 87-4-915, MCA

Reason: Written authorization to own, control, or propagate captive-reared upland game birds for purposes other than sale or conveyance is required according to 87-4-902(1), MCA. Previously, written authorization was issued with conditions determined by department policy. The policy was developed to protect native birds and to allow the department to effectively keep track of the permitted birds. This new rule will clarify the previous policy in administrative rule.

NEW RULE VI NATIONAL POULTRY IMPROVEMENT PLAN (1) Game bird farm licensees who maintain a breeding flock over the winter to hatch out offspring for sale and potential release in Montana must be National Poultry Improvement Plan (NPIP) certified.

(2) Game bird farm licensees who do not over-winter birds, but purchase their eggs or chicks from NPIP sources do not need to acquire NPIP certification.

(3) NPIP certification is obtained through the Montana Department of Livestock.

AUTH: 87-4-913, MCA

IMP: 87-4-906, 87-4-908, MCA

Reason: NPIP requires that birds be tested for various pathogens in order for the hatchery to become NPIP certified. NPIP certification of source stock for Montana game bird farms will help assure that only healthy birds are available for sale and potential release in Montana.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.6.1601 APPLICATION FOR AND RENEWAL OF GAME BIRD FARM LICENSE (1) Application for a game bird farm license shall be made in writing on a form prescribed by the department of fish, wildlife, and parks.

(2) The application shall include a ~~\$25~~ 100 license fee with the initial application.

(3) A game bird farm license may be renewed prior to January 31 upon payment of a fee of ~~\$45~~ 50.

(4) All game bird farm licenses expire on January 31 following the date of issuance.

(5) A game bird farm operator whose license has expired for more than 4 one year will be considered a new applicant and pay the ~~\$25~~ 100 initial application fee accompanied by an initial application form.

(6) The department may not renew a game bird farm license until the licensee has submitted the report described by 87-4-912, MCA, on forms provided by the department.

AUTH: 87-4-913, MCA  
IMP: 87-4-911, MCA

Reason: This increase in fees for game bird farms was evaluated during a programmatic environmental impact statement completed by the department in 2002. Two public hearings and a written public comment period were conducted during the programmatic environmental impact statement process. The department initially set the game bird farm fees in 1984. This increase will help offset the costs of program administration.

12.6.1602 PURCHASE AND SALE OF GAME BIRDS (1) No person may purchase live game birds from within the state except from the holder of a current game bird farm license. Licensees may sell live game birds within the state only if the prospective purchaser is legally entitled to possess live game birds as evidenced by any of the following:

(a) a permit to possess live game birds for ~~non-commercial~~ noncommercial use;

(b) a permit to kill captive-reared birds in dog training;

(c) a permit to kill captive-reared birds in raptor training;

~~(b)~~ (d) a permit to release live game birds ring-necked pheasants;

~~(c)~~ (e) a shooting preserve license;

~~(d)~~ (f) a zoo or menagerie permit;

~~(e)~~ (g) a permit to conduct a field trial; or

(f) (h) a game bird farm license.

(2) remains the same.

AUTH: 87-4-913, MCA  
IMP: 87-4-902, 87-4-915, MCA

Reason: The permit to kill captive-reared birds in dog training was previously included in the permit to possess live game birds for noncommercial use. It has now been developed as a stand-alone permit. The department thought that this permit could be tracked and administered much more effectively if it was separated from the general permit. The two permits are administered very differently because the tracking requirements of a permit to use captive-reared birds in dog training are much different than, for example, a permit to allow an individual to raise a few captive-reared birds for consumption.

The permit to kill captive-reared birds in raptor training is a new permit. Recently people training raptors have requested permits to use captive-reared game birds.

Since this kind of training differs markedly from dog training, the department needed to create a separate permit to address use of captive-reared game birds in this situation.

12.6.1603 FENCING (1) The licensee shall fence or enclose his operation sufficiently to prevent the entry of wild game birds and to prevent the escape of game bird farm birds into the wild.

(2) The fencing enclosures of all game bird farm operations licensed on or before October 1, 1983, are deemed adequate for compliance with this rule.

AUTH: 87-4-913, MCA  
IMP: 87-4-911, MCA

Reason: The department decided to amend ARM 12.6.1603 as proposed to prevent confusion of game bird farms with game farms, or alternative livestock ranches.

5. The department proposes to transfer the following rule:

<u>OLD</u>	<u>NEW</u>	
12.6.1606	12.6.210	FIELD TRIAL PERMITS

Reason: This administrative rule is currently under subchapter 16, "Game Bird Farms." The rule is being moved to subchapter 2 of the administrative rules entitled "Field Trial Regulations" so that all the rules pertaining to the use of captive-reared upland game birds for training or other events will be in one place in the administrative rules. The department hopes having all the rules in one place will reduce confusion and make it easier for department personnel and the public to locate all pertinent rules.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Tim Feldner, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4049; fax (406) 444-4952; or e-mail tfeldner@mt.gov, and must be received no later than 5:00 p.m., July 5, 2007.

7. Tim Feldner, or another hearings officer appointed by the department, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-

7456, or may be made by completing the request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ M. Jeff Hagener

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Director

Department of Fish, Wildlife  
and Parks

/s/ Rebecca J. Dockter

Rebecca J. Dockter

Rule Reviewer

Certified to the Secretary of State May 29, 2007.